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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.                 | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------------------|------------------|
| 09/982,315   | 10/17/2001  | Horst Fischer        | 200116.403D1                        | 6566             |
| 500 7590 04/09/2007<br>SEED INTELLECTUAL PROPERTY LAW GROUP PLLC<br>701 FIFTH AVE<br>SUITE 5400<br>SEATTLE, WA 98104 |             |                      | EXAMINER<br>MCINTOSH III, TRAVISS C |                  |
|  |             |                      | ART UNIT<br>1623                    | PAPER NUMBER     |
| SHORTENED STATUTORY PERIOD OF RESPONSE   |             |                      | MAIL DATE                           | DELIVERY MODE    |
| 3 MONTHS   |             |                      | 04/09/2007                          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/982,315

Applicant(s)

FISCHER ET AL.

Examiner

Traviss C. McIntosh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/8/07</u> . | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

The Amendment filed 12/22/2006 has been received, entered into the record, and carefully considered. The following information provided in the amendment affects the instant application by:

Claim 64 has been amended.

Claims 1-63 and 65-67 have been canceled.

Remarks drawn to rejections of Office Action mailed 6/23/2006 include:

102(b) rejection: which have been overcome by applicant's amendments and have been withdrawn.

An action on the merits of claim 64 is contained herein below. The text of those sections of Title 35, US Code which are not included in this action can be found in a prior Office.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 64 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that

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the inventor(s), at the time the application was filed, had possession of the claimed invention.

This is a *new matter* rejection.

In the amendment filed by applicants on December 1, 2004 applicants have amended claim 64 to "carve out" the compound which was cited in the 102 rejection of the office action dated September 1, 2004. Applicants do not have support for the claims as amended, specifically for "compositions which do not consist essentially of quercetin in combination with ascorbic acid". The original disclosure does not provide any guidance for indicating that the composition must contain moieties in the recited groups minus the specific combination of quercetin and ascorbic acid. The changing of the scope of a claim, either by broadening or narrowing, can be construed as new matter as either is capable of changing the scope of what is claimed, and the narrower or broader group must be supported in its entirety by the specification as originally filed. Applicants stated that because each was supported in the specification, they could then be removed. However, it is noted that while the individual agents can be excluded individually, the composition minus the specific combination of agents is not seen to be supported. Changing the claim to delimit ascorbic acid and also delimit quercetin from the composition as a whole would be seen to be supported. As set forth supra, the original disclosure does not have support for the composition as presently claimed.

It is noted that a rejection of the claims is reviewable by the Board of Patent Appeals and Interferences.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traviss C. McIntosh whose telephone number is 571-272-0657.

The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Traviss McIntosh  
April 2, 2007

Shaojia A. Jiang  
Art Unit 1623  
Supervisory Patent Examiner

